

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 57

AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-1-10-5, AS ADDED BY P.L.91-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) A state agency may disclose the Social Security number of an individual if any of the following apply:

- (1) The disclosure of the Social Security number is expressly required by state law, federal law, or a court order.
- (2) The individual expressly consents in writing to the disclosure of the individual's Social Security number.
- (3) The disclosure of the Social Security number is:
 - (A) made to comply with:
 - (i) the USA Patriot Act of 2001 (P.L. 107-56); or
 - (ii) Presidential Executive Order 13224; or
 - (B) to a commercial entity for the permissible uses set forth in the:
 - (i) Drivers Privacy Protection Act (18 U.S.C. 2721 et seq.);
 - (ii) Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or
 - (iii) Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.).
- (4) The disclosure of the Social Security number is for the purpose of administration of a state agency employee's or the state agency employee's dependent's health benefits.

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(5) The disclosure of the Social Security number is for the purpose of administration of:

- (A) a pension fund administered by the board of trustees of the public employees' retirement fund;**
- (B) the Indiana state teachers' retirement fund;**
- (C) a deferred compensation plan or defined contribution plan established under IC 5-10-1.1; or**
- (D) a pension plan established by the state police department under IC 10-12.**

(b) A state agency's disclosure of the Social Security number of an individual in compliance with subsection (a) does not violate IC 5-14-3-4(a)(12).

SECTION 2. IC 36-8-8-12.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12.7. (a) This section applies to hearings conducted by local boards concerning determinations of impairment under this chapter or of disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(b) At least five (5) days before the hearing, the local board shall give notice to the fund member and the safety board of the time, date, and place of the hearing.

(c) The local board must hold a hearing not more than ninety (90) days after the fund member requests the hearing.

(d) At the hearing, the local board shall permit the fund member and the safety board to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

(e) At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

(f) The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its

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determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

(i) If the local board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment. **The PERF board shall review an impairment determined under this subsection as provided in section 13.1 of this chapter.**

(j) The local board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination of the local board after a hearing is final and may be appealed to the court.

(o) With respect to a hearing conducted for purposes of determining impairment or class of impairment under this chapter, the fund member may appeal the local board's determinations. An appeal under this subsection:

- (1) must be made in writing;
- (2) must state the class of impairment and the degree of impairment that is claimed by the fund member;

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(3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and

(4) must be filed with the local board and the PERF board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations.

(p) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

(1) retained in the separate medical file created for the member; and

(2) treated as a confidential medical record.

(q) If a local board determines that a fund member described in section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the 1977 fund advisory committee concerning whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter. The local board shall forward its recommendation to the 1977 fund advisory committee.

(r) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(s) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

SECTION 3. IC 36-8-8-13.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13.1. (a) If:

(1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department,

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considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or

(2) the fund member has filed an appeal under section 12.7(o) of this chapter;

the local board shall submit the local board's determinations and the safety board's determinations to the PERF board's director.

(b) Whenever a fund member is determined to have an impairment under section 12.7(i) of this chapter, the PERF board's director shall initiate a review of the default award not later than sixty (60) days after the director learns of the default award.

~~(b)~~ (c) After the PERF board's director receives the determinations **under subsection (a) or initiates a review under subsection (b)**, the fund member must submit to an examination by a medical authority selected by the PERF board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The PERF board shall adopt rules under IC 4-22-2 to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the PERF board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

~~(c)~~ (d) The PERF board's director shall review the medical authority's report and the local board's determinations and issue an initial determination within sixty (60) days after receipt of the local board's determinations. The PERF board's director shall notify the local board, the safety board, and the fund member of the initial determination. The following provisions apply if the PERF board's director does not issue an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

- (1) In the case of a review initiated under subsection (a)(1):
 - (A) the determinations of the local board and the chief of the police or fire department are considered to be the initial determination; and
 - (B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.
- (2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.
- (3) In the case of a review initiated under subsection (b), the**

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initial determination is the impairment determined under section 12.7(i) of this chapter.

~~(d)~~ **(e)** The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the PERF board. If a timely written objection is filed, the PERF board shall issue the final order after a hearing. The final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination **or the date the PERF board's director initiates a review under subsection (b).** The following provisions apply if a final order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the chief of the police or fire department:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.

(3) In the case of a review initiated under subsection (b), the impairment determined under section 12.7(i) of this chapter is considered to be the final order.

~~(e)~~ **(f)** If the PERF board approves the director's initial determination, then the PERF board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the PERF board does not approve the initial determination, the PERF board may receive additional evidence on the matter before issuing a final order.

~~(f)~~ **(g)** Appeals of the PERF board's final order may be made under IC 4-21.5.

~~(g)~~ **(h)** The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in section 12.7(p) of this chapter.

SECTION 4. P.L.126-2003, SECTION 1, AS AMENDED BY P.L.220-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: SECTION 1. (a) As used in this SECTION, "PERF board" refers to the public employees' retirement fund board of trustees established by IC 5-10.3-3-1.

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(b) As used in this SECTION, "fund" refers to the fund for the defined contribution plan of the legislators' retirement system established by IC 2-3.5-3-2.

(c) Beginning January 1, 2004, the PERF board shall conduct a pilot program concerning:

- (1) the implementation of a member's investment selection; and
- (2) the crediting of a member's contributions and earnings;

for the fund.

(d) The pilot program referred to in subsection (c) must include the following elements:

(1) Notwithstanding IC 2-3.5-5-3(b)(2), the PERF board shall implement a member's selection under IC 2-3.5-5-3 not later than the next business day following receipt of the member's selection by the PERF board. This date is the effective date of the member's selection.

(2) Notwithstanding IC 2-3.5-5-3(b)(7), all contributions to a member's account in the fund must be allocated under IC 2-3.5-5-3 not later than the last day of the quarter in which the contributions are received and reconciled in accordance with the member's most recent effective direction.

(3) Notwithstanding IC 2-3.5-5-3(c) and IC 2-3.5-5-3(d), when a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member is the market value of the member's investment as of five (5) business days preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date.

(4) Notwithstanding IC 2-3.5-5-4, contributions to the fund under IC 2-3.5-5-4 must be credited to the fund not later than the last day of the quarter in which the contributions were deducted.

(5) Notwithstanding IC 2-3.5-5-5, the state shall make contributions under IC 2-3.5-5-5 to the fund not later than the last day of each quarter. The contributions must equal twenty percent (20%) of the annual salary received by each participant during that quarter.

(e) Before November 1, ~~2005~~, **2006**, the PERF board shall report to the pension management oversight commission established by IC 2-5-12 the results of the pilot program referred to in subsection (c) and shall recommend proposed legislation if the report includes a finding that the pilot program should be implemented on a permanent basis. If the PERF board recommends implementing the pilot program on a permanent basis, the PERF board shall provide to the pension management oversight commission a schedule to implement the

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elements of the pilot program on a permanent basis for all funds for which it has responsibility.

(f) This SECTION expires July 1, ~~2006~~ **2007**.

SECTION 5. [EFFECTIVE JULY 1, 2006] **(a) IC 36-8-8-12.7 and IC 36-8-8-13.1, both as amended by this act, apply to impairments determined under IC 36-8-8-12.7(i) after June 30, 2006.**

(b) This SECTION expires July 1, 2007.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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